REMARKS/ARGUMENTS

Claims 1 - 12, 14, 16, 17 and 19 - 53 are pending in the present application. Claims 33 and 41 have been amended at the suggestion of the examiner. Independent claim 19 has been amended to more directly correlate to the limitations of the independent claims 1 and 41. Claims 22 and 46 have also been amended to cure obvious typographical errors. It is respectfully asserted that no new features are added and the amendments will not require a supplemental search or consideration. No claims were added or canceled. Reconsideration of the claims is respectfully requested.

I.   35 U.S.C. § 112, Second Paragraph

The Examiner has rejected claims 33 and 41-53 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention.

Applicant appreciates the examiner's diligence in pointing out the antecedent error in claim 33 and that claim has been amended as per the examiner's suggestions.

With regard to claim 41, the examiner states that it is "unclear" whether certain elements recited in the claim refer to other elements with identical nomenclature in that claim. The examiner further queries whether the subject elements are intended to be "the same as or different from" the aforementioned elements. While applicant has amended the claim, the amendment has been made only in the furtherance of an expeditious allowance of the claims.

The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. See Amgen Inc. v. Chugai Pharmaceutical Co. Ltd., 927 F.2d 1200, 1217, 18 USPQ2d 1016, 1030 (Fed. Cir.), cert. denied sub nom., Genetics Inst.,

Inc. v. Amgen, Inc., 112 S.Ct. 169 (1991) (citing Shatterproof Glass Corp. v. Libby-Owens Ford Co., 758 F.2d 613, 624, 225 USPQ 634, 641 (Fed. Cir. 1985)).

Applicant reminds that the Examiner that the courts have always allowed an Applicant to claim the invention in alternative language, and that the use of alternative language has never been judged to be *indefinite* under the meaning of section 112. "Breadth of a claim is not to be equated with indefiniteness." *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). As for claim 41, the Examiner properly evaluated the scope of the offending portion of the claim as either being the same or a different element, hence an *alternative* recitation. Those of skill in the art could reasonablly evaluate both alternatives without any difficulty whatsoever in the same manner as the examiner articulated in the rejection. As such, Applicant respectfully asserts that claim 41 is definite and the rejection should be withdrawn.

II.   35 U.S.C. § 103, Obviousness

The Examiner has rejected claims 1 – 12, 14, 16, 17 and 19 – 53 under 35 U.S.C. § 103 as being unpatentable over Zustak in view of Kuwano. This rejection is respectfully traversed.

Initially, it is well settled that it is the burden of the Patent Office to demonstrate that the invention as a whole is obvious based on the prior art and not that each claimed element may have existed at the time the invention was made. Furthermore, prior art itself must suggest the claimed invention.

> The inquiry is not whether each claimed element existed in the prior art, but whether the invention as a whole is obvious in light of the prior art. *In re Durden*, 763 F.2d 1406, 1410, 226 USPQ 359, 367 (Fed. Cir. 1985).

> A prima facie case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of

ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993).

Finally, in examining the claimed invention, the Examiner must consider each and every claim limitation.

> All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994).

INDEPENDENT CLAIM 1:

In comparing Kuwano to the claimed invention to determine obviousness, limitations of the presently claimed invention may not be ignored. The present invention in claim 1 recites:

> a motion detector for detecting motion in at least a portion of the surveillance area and issuing a motion indication; and
> a video processor for receiving the video sensory electrical signals representative of the image frames and *determining which image frames to save in the memory based on receiving a motion indication.* (My emphasis)

It is respectfully asserted that such a feature is not taught or suggested by Kuwano or Zustak and no combination of Kuwano and Zustak is suggestive of this feature. Therefore, claim 1 is not obvious in view of Kuwano and Zustak.

On page 4 of the Office Action the Examiner points to Kuwano which allegedly discloses "a memory where sensory electrical signals are stored, i.e. digital recording device 204, a motion detector, i.e. monitor control device 206," and "a video processor, i.e. monitor control device 206, for determining *which image frames to save* in memory based on receiving a motion indication." (My emphasis)   Applicant vigorously asserts that nowhere does Kuwano teach or suggest any mechanism for determining *which image*

frames to save in a memory. At best, Kuwano teaches only to *start recording* once an appropriate motion vector has been detected for a <u>single image frame</u>.

Kuwano specifically teaches not to record any image frames until a particular motion vector is detected by motion vector detecting circuit 221 (FIG. 11, steps 54 and 55) and then to record <u>all</u> image frames until a "recording stop command" is entered by a supervisor (col. 8, lines 41-49, FIG. 11, steps 57- 60). Hence, Kuwano does not teach or suggest a video processor which determines *which image frames to save in the memory based on receiving a motion indication*, but instead teaches to "start recording" based on an analysis of the image frames.

Kuwano expressly discloses monitor control device 206 to "start recording" (and to drive the alarm, step 56) based on the receipt of a motion vector and then record every image frame without receiving any other motion vector (it's not immediately clear from the disclosure whether motion vector detecting circuit 221 of monitor control device 206 processes any images after the alarm is triggered). A manual stop command is used by a supervisor to disable recorder 204 and alarm 223.

> When it is judged at the step 55 that the object moves in at least one of the detecting areas E, *it is judged that a person enters the monitoring area, so that the alarm 223 is driven to report to a supervisor that a person enters the monitoring area, and <u>recording by the recording device 204 is started</u> to record the person entering the monitoring area (step 56).* Further, the during-monitoring display lamp 224 is turned off.
>
> Thereafter, when the supervisor enters an alarm stop command using the operating unit 225 (YES at step 57), the driving of the alarm 223 is stopped (step 58) (col. 8, lines 33-43) (My emphasis)

In stark contrast with the teaching of Kuwano, some aspects of the presently claimed invention are directed to a network surveillance device which captures video of a surveillance area and attempts to transmit the surveillance images to a remote location over an existing coaxial network. An existing coaxial network is used as the

transmission medium because on many campuses, especially healthcare facilities, the existing coaxial network is dedicated to cable television programming, and may be somewhat underutilized. Conversely, allocating space on a facility's twisted-wire network for carrying simultaneous streams of surveillance video is uncertain at best due to the bandwidth consumption of high priority users on that network. The presently claimed video surveillance device monitors the surveillance area continuously and attempts to feed the captured streaming image frames across the existing coaxial network to a remote location with a monitor device in real-time. Every active network surveillance device connected to the existing coaxial network is simultaneously attempting to transmit its streaming video across the coaxial network as a streaming video. As might be appreciated, even the relatively underutilized existing coaxial network may not have the necessary bandwidth for transmitting all of the simultaneous streams of surveillance video error-free or the network may experience a failure at a critical time. Furthermore, even if the streaming surveillance video successfully reaches the remote monitor, it can not be known for certain that all important events in the surveillance video will be viewed at the remote monitoring station. Hence, the presently claimed video surveillance device handles surveillance video using a unique multi-level protocol.

At the highest level is the surveillance video that may include important events. This captured video usually contains some type of motion. When motion is detected in the surveillance area, each corresponding video frame with motion is electronically flagged as having a higher priority and date stamped. The high priority video frames are then temporarily saved in a local memory of the network surveillance device, such as a hard drive (see page 32, line 19 *et seq.*). The motion detector may be any type of motion detected sensor (see page 17, lines 2-9) or, alternatively, motion may be detected from differences between image frames (see page 32, line 12, *et seq.*). Only image frames having motion associated with them are flagged for storage as having a higher priority.

In so doing, a video history of important events occurring within the surveillance area may be retained locally (page 33, line 10-15) for viewing or downloading at a later time using the coaxial network by anyone with the proper authorization level (see page 33, lines 2-3, security levels discussed at page 26, line 8, *et seq.*). Because these high priority images may be extremely important for a real-time response to the event, the high priority image frames are simultaneously transmitted to the monitoring station across the coaxial network (see page 32, line 3 *et seq.*). Therefore, regardless of whether or not the events are viewed at the monitoring station, a record is kept of every high priority image frame on the local memory (although it should also be appreciated that that the captured video data from the coaxial network is temporarily stored on network database 409 contemporaneously with viewing the data at the monitor station (page 26, line 5, *et seq.*)). Since the local memory has a finite amount of storage capacity, even the high priority image frames must be downloaded or eventually overwritten, at some point, to make space for new high priority image frames (see page 32, lines 28, *et seq.*).

At a second level, some surveillance video may not be transmitted to the remote monitoring station due to network error or traffic bottlenecks (page 32, line 19 *et seq.*). In that case, the captured surveillance video may be temporarily saved to the local memory with the high priority surveillance video. That video can then be retransmitted with a slight time delay (page 32, lines 20-23) or retained until it is overwritten. This is different from a typical IP transmission sequence wherein a message is cached and then transmitted. When the sender device receives an acknowledgement, the cache is discarded, however, if the sender device does not receive an acknowledgement, it will typically resend the message from the cache several times before it gives up. If an error is received, or the sender device gives up, the sender device generates an alert message to the user that an error has occurred.

With regard to the rejection of claim 1, a video processor is recited "for receiving the video sensory electrical signals representative of the image frames and *determining which image frames to save in the memory based on receiving a motion indication*." If a motion indication is received, the video processor flags those image frames as having a higher priority and time stamps them, and then stores them in memory 140 where it is saved. Claim 1 requires that the video processor make a plurality of determinations that result in each of a corresponding plurality of image frames being saved in a memory, or not being saved in the local memory. At best, Kuwano describes making one determination that results in a *"start recording"* condition for all subsequent image frames until the recording *is manually stopped.* That determination is based on detecting a single motion vector, and not on an ongoing determination of all image frames as recited in claim 1. Since a prior art reference (or references when combined) must teach or suggest each and every limitation in the claim under examination (*In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)), it is respectfully asserted that the present rejection of claim 1 is improper and should be withdrawn.

Additionally, a proper *prima facie* case of obviousness cannot be established by combining the teachings of the prior art absent some teaching, incentive, or suggestion supporting the combination. *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782, 1784 (Fed. Cir. 1995); *In re Bond,* 910 F.2d 831, 834, 15 U.S.P.Q.2d 1566, 1568 (Fed. Cir. 1990). Kuwano provides no motivation whatsoever for one of ordinary skill to modify the subscriber call television coaxial network of Zustak toward the presently claimed invention. Kuwano accurately describes, with specificity, multiple embodiments and operating modes of a monitoring system capable of automatically detecting and reporting to a supervisor that a person enters a monitoring area from an area outside the monitoring area (see the abstract). Kuwano discloses no shortcomings or advantages that are suggestive of modifying a subscriber call television coaxial network with the supervisor-controlled monitoring system. Furthermore, Zustak provides no

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rationale that might motivate one of ordinary skill to modify the subscriber call television coaxial network with a monitoring system capable of automatically detecting and reporting to a supervisor that a person enters a monitoring area from an area outside the monitoring area.

The Examiner has apparently read Applicant's teachings into the disclosure of Kuwano rather than reading the limitations from it. "In determining obviousness, an applicant's teachings may not be read into the prior art." *Panduit Corp. v. Denison Mfg. Co.*, 810 F.2d 1561, 1575 n. 29, 1 U.S.P.Q. 1593, 1602 n. 29 (Fed. Cir. 1987) (citing need to "guard against hindsight and the temptation to read the inventor's teachings into the prior art"). A determination of the desirability of combining prior art references must be made without the benefit of hindsight afforded by an applicant's disclosure. *In re Paulsen*, 30 F.3d 1475, 1482, 31 U.S.P.Q. 1671, 1676 (Fed. Cir. 1994).

It is respectfully asserted that the sole rationale for combining the reference is that the Examiner has engaged in impermissible hindsight reconstruction to reach the present invention and, therefore, the rejection of claim 1 is improper. "[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious ... .This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'" *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). As such, it is respectfully asserted that the present rejection of claim 1 is improper and should be withdrawn.

For the reasons given above, Applicant respectfully requests that the rejection of claim 1 be withdrawn.

Since claims **2 - 14, 16, 17,** and **25 - 40** depend from claim **1**, those claims are allowable for the same reasons as claim 1.

INDEPENDENT CLAIM 19:

It is respectfully asserted that in its un-amended form claim **19** is allowable over the cited prior art for the same reasons as discussed for claim **1** above. However, in its un-amended form claim **19** may not positively recite method steps requiring the video processor make a plurality of determinations that result in each of a corresponding plurality of image frames being saved in a memory. Therefore, claim **19** has been amended to more directly correlate to the claim limitations of claims **1** and **41**.

Since claims **20-24** depend from claim **19**, those claims are allowable for the same reasons as claim **19**.

INDEPENDENT CLAIM 41:

It is respectfully asserted that claim **41** is allowable over the cited prior art for the same reasons as discussed for claim **1** above. Since claims **42-53** depend from claim **41**, those claims are allowable for the same reasons as claim **41**.

CLAIM 24:

The Examiner has taken official notice of the concept of "sending/receiving a transmission error when a video sensor cannot transmit a video image and the concept of storing in a memory the last transmitted video before the transmission error occurred" as being facts so notoriously well known as to be capable of instant and unquestionable demonstration as being well known. This rejection is strenuously traversed..

Initially, it should be noted that the Examiner has attempted to reach the limitations of the independent claims by modifying the alleged teachings of Zustak with Kuwano. Now, in an effort to reach the limitations of claim **24**, the Examiner disregards the express and explicit teaching of Zustak in view of alleged common knowledge, in direct contradiction of the Examiner's own reference. Kuwano expressly states that the recording is stopped by receiving a command manually issued by a supervisor. This is

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so and must be done because Kuwano device records <u>all</u> image frames until a "recording stop command" is entered by a supervisor (col. 8, lines 41 - 49, FIG. 11, steps 57 - 60).

Furthermore, while Applicant may agree that network traffic data are almost always cached in the event that a retransmission of the data are necessary, the caching event occurs prior to the receipt of the network error and before the initial data transfer event is attempted (see discussion above at claim 1). Generally, it is expected that the network data are held in cache until a successful transmission has been acknowledged or the sending device gives up. This caching occurs prior to the data being transmitted, or else if the transmission fails, the data may be lost and cannot be immediately retransmitted. The subject matter of claim 24 is directed elsewhere. Claim 24 requires saving the first captured image frame to the memory only after the initial transmission of the video sensory electrical signals onto the existing coaxial network fails.

In any case, Applicant respectfully requests the Examiner demonstrate that the aforementioned concepts are so notoriously well known as be capable of instant and unquestionable demonstration as being well known.

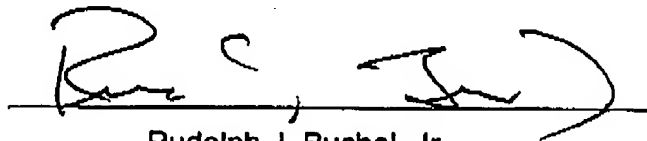It is respectfully asserted that claim 24 is allowable for the reasons discussed above.

III.   Conclusion

It is respectfully urged that the subject application is patentable over any combination of Zustak with Kuwano and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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